Rov 12 9 18 AM '97

Federal Communications Commission

DA 97-2317

ISPARAHEN	
DIGIN	Before the
	Federal Communications Commission
	Washington, D.C. 20554
	Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-229
Table of Allotments,)	RM-9100
FM Broadcast Stations.)	
(Warrenton, North Carolina and La Crosse,)	
Virginia))	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 298, 1997 Released: November 7, 1997

Comment Date: December 29, 1997 Reply Comment Date: January 13, 1998

By the Chief, Allocations Branch:

- 1. The Commission has before it the petition for rule making filed by MainQuad, Inc. ("petitioner"), requesting the reallotment of Channel 297C2 from Warrenton, NC, to La Crosse, VA, as the community's first local aural service, and the modification of Station WXNC's construction permit to specify La Crosse as its community of license. Petitioner states that it will apply for the channel, if allotted.
- 2. Petitioner states that La Crosse is an incorporated community with a population of 549 persons, according to the 1990 Census. In addition, petitioner points out that La Crosse is governed by a mayor and town council and the community has a one-person police force and thirty person volunteer fire department as well as a post office. Petitioner also states that the reallotment of Channel 297C2 to La Crosse will provide the community with its first local aural transmission service. Warrenton, on the other hand, will retain local aural transmission service from AM Station WARR. Warrenton has a 1990 U.S. Census population of 949 persons.
- 3. Based on our initial examination of the proposal, we find that the reallotment of Channel 297C2 to Warrenton would not result in Station WXNC providing a 70 dBu signal to any part of an urbanized area. We also find that the change of community would result in a gain of 19,703 persons in an area of 1630 square kilometers (630 square miles) and a loss of 32,118 people within an area of 1630 square kilometers (630 square miles). Thus, the reallotment of Channel 297C2 to Warrenton would result in a net loss of population served of 12,415 persons. While we consider important the potential service that an unbuilt station represents, it is not a service upon which the public has come to rely. Therefore, we do not consider its removal from a community to represent the same concerns with loss of service that removal of an operating station would represent. Further, the reallotment will not cause any white or gray area to be

created within the loss area nor serve any white or gray area within the gain area.

- 4. Channel 297C2 can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east to accommodate petitioner's desired transmitter site.¹
- 5. We believe petitioner's proposal warrants consideration since the reallotment of Channel 297C2 to :La Crosse, Virginia, could provide the community with its first local aural transmission service without depriving Warrenton of its sole local aural service. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 297C2 at La Crosse. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	<u>Channel No.</u> <u>Present</u>	Proposed
Warrenton, North Carolina La Crosse, Virginia	297C2	 297C2

- 6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.
- 7. Interested parties may file comments on or before , 1997, and reply comments on or before , 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John M. Pelkey Haley Bader & Potts, P.L.C. Suite 900 4350 North Fairfax Drive Arlington, VA 22203-1633 (Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of

¹ The coordinates for Channel 297C2 at La Crosse are 36-45-07 North Latitude and 77-55-36 West Longitude.

Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos Chief, Allocations Branch Policy and Rules Division Mass Media Bureau

Attachment: Appendix

APPENDIX

- 1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.
- 2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
- 3. <u>Cut-off protection</u>. The following procedures will govern the consideration of filings in this proceeding.
- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
- (b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
- (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
- 4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

- 5. <u>Number of Copies</u>. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
- 6. <u>Public Inspection of Filings</u>. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.